

108TH CONGRESS
1ST SESSION

H. R. 1183

To promote the Sensible Development of Renewable Energy in the Waters
of the Coastal Zone, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 2003

Mr. DELAHUNT (for himself and Mr. SAXTON) introduced the following bill;
which was referred to the Committee on Resources

A BILL

To promote the Sensible Development of Renewable Energy
in the Waters of the Coastal Zone, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Coastal Zone Renew-
5 able Energy Promotion Act of 2003”.

6 **SEC. 2. FINDINGS; PURPOSES AND OBJECTIVES.**

7 (a) FINDINGS.—The Congress finds that—

8 (1) There is an increasing need for the produc-
9 tion of electricity from energy facilities that use re-
10 newable resources and some of these facilities may

1 be located in waters under the jurisdiction of the
2 United States, including the coastal zone;

3 (2) Energy companies have already sought to
4 construct energy facilities in State and Federal wa-
5 ters that will use renewable wind energy resources;

6 (3) Nationwide there are more than 50 pro-
7 posals to construct and operate “wind farms” for
8 producing electricity in State and Federal waters,
9 and some of these proposals include anchoring more
10 than five hundred wind towers to the ocean seabed
11 within sight of land;

12 (4) Existing Federal and State law does not
13 provide a process to address the unique issues raised
14 by proposals to locate energy facilities for renewable
15 resources in the marine environment, thereby hin-
16 dering or jeopardizing sensible development of these
17 renewable energy resources; and

18 (5) New Federal and State policies are needed
19 to ensure the timely and sensible development of re-
20 newable energy resources that are accessible in the
21 marine environment and to provide a mechanism to
22 resolve the significant public trust issues involved in
23 resource allocation and multiple uses in the marine
24 environment.

1 (b) PURPOSES AND OBJECTIVES.—The purposes and
2 objectives of this Act are to—

3 (1) promote the sensible development of energy
4 facilities that use renewable energy resources in the
5 marine environment by authorizing the Secretary of
6 Commerce to establish a licensing regime and per-
7 mitting process to ensure due consideration of the
8 public trust issues involved in resource allocation,
9 multiple use, and impacts on the marine environ-
10 ment;

11 (2) direct the Secretary of Commerce, acting
12 through the Administrator of the National Oceanic
13 and Atmospheric Administration (NOAA), to use
14 NOAA's expertise about the marine environment
15 and coastal zone to develop new Federal rules and
16 regulations to authorize and govern the sensible de-
17 velopment of renewable energy resources in a man-
18 ner that provides for public safety, safe navigation,
19 protection of the marine environment, prevention of
20 waste, conservation of natural resources, access to
21 important commercial and recreational fishing areas,
22 the protection of correlative rights, protection of na-
23 tional security interests, and payments to the Fed-
24 eral Government for constructing and operating re-
25 newable energy facilities in waters under the juris-

1 diction of the United States seaward of the coastal
2 zone; and

3 (3) encourage coastal States to amend their
4 coastal zone management plans to include policies
5 and procedures that address—

6 (A) issues arising from the location in the
7 marine environment of energy facilities that uti-
8 lize renewable energy sources;

9 (B) conflicting and competing resource al-
10 location and multiple use issues; and

11 (C) any adverse impacts from such facili-
12 ties on the marine environment, commercial and
13 recreational fishing and other activities, the
14 boating community and aesthetic, cultural and
15 historic values.

16 **SEC. 3. DEFINITIONS; EFFECTIVE DATE.**

17 (a) DEFINITIONS.—

18 (1) Except where provided otherwise, any term
19 used in this Act that is defined in the Coastal Zone
20 Management Act of 1972 (16 U.S.C. 1453 et seq.)
21 shall have the same meaning as provided in that Act
22 (as amended by this Act).

23 (2) Section 304 of the Coastal Zone Manage-
24 ment Act of 1972 (16 U.S.C. 1453) is amended
25 by—

1 (A) renumbering paragraphs (16) through
2 (18) as paragraphs (18) through (20), respec-
3 tively;

4 (B) inserting after paragraph (15) the fol-
5 lowing new paragraphs—

6 “(16) The term ‘renewable energy facility’
7 means any equipment or facility which is or will be
8 used primarily—

9 “(A) in the development, production, con-
10 version, storage, transfer, processing, or trans-
11 portation of any renewable energy resource; or

12 “(B) for the manufacture, production, or
13 assembly of equipment, machinery, products, or
14 devices which are involved in any activity de-
15 scribed in subparagraph (A).

16 “(17) The term ‘renewable energy resource’
17 means a source of energy that is regenerative and is
18 produced without depleting or otherwise diminishing
19 the resource from which such energy is derived.
20 Such term includes, but is not limited to, solar, ther-
21 mal, and wind energy sources.”; and

22 (C) inserting after paragraph (20) (as re-
23 numbered by subparagraph (A)) the following
24 new paragraph:

1 “(21) The term ‘wind energy facility’ means a
 2 facility or equipment that converts the kinetic energy
 3 of wind into electricity. Such term includes all nec-
 4 essary components for the generation and trans-
 5 mission of such wind energy.”.

6 (b) EFFECTIVE DATE.—The amendments made to
 7 the Coastal Zone Management Act of 1972 (16 U.S.C.
 8 1451 et seq.) by this Act shall be effective on the date
 9 of enactment of this Act.

10 **TITLE I—COASTAL STATE** 11 **MANAGEMENT**

12 **SEC. 101. COASTAL ZONE ENHANCEMENT OBJECTIVES.**

13 Section 309 of the Coastal Zone Management Act of
 14 1972 (16 U.S.C. 1456b) is amended—

15 (1) in subsection (a) by inserting at the end the
 16 following new paragraph—

17 “(8) The procedures and enforceable policies
 18 adopted to facilitate the location of renewable energy
 19 facilities in the marine environment, including any
 20 wind energy facility, shall, among other things—

21 “(A) identify priority locations for renew-
 22 able energy facilities in the coastal zone;

23 “(B) ensure continued access to commer-
 24 cial and recreational fishing areas, including
 25 shellfish beds;

1 “(C) include an environmental review of
2 the potential impacts on—

3 “(i) marine mammals and endangered
4 species and their designated critical habi-
5 tat;

6 “(ii) birds;

7 “(iii) the marine environment includ-
8 ing the seabed;

9 “(iv) aesthetic, cultural and historical
10 resource values; and

11 “(v) the cumulative impacts of mul-
12 tiple renewable energy facilities;

13 “(D) evaluate navigational and public safe-
14 ty concerns, including but not limited to avia-
15 tion safety, and ensure continued access to im-
16 portant traditional recreational boating areas;

17 “(E) include obligations for the payment of
18 funds necessary to pay for the decommissioning
19 and removal of renewable energy facilities;

20 “(F) include an assessment of the need for
21 the energy produced by renewable energy facili-
22 ties; and

23 “(G) take into account national security
24 interests.”;

1 (2) in subsection (c) by inserting at the end the
 2 following new sentence: “In making funding deci-
 3 sions, the Secretary shall give special consideration
 4 to those proposals for management program changes
 5 related to the implementation of the objectives iden-
 6 tified in paragraph (a)(8) in States with pending re-
 7 newable energy facility proposals.”.

8 **TITLE II—FEDERAL MARINE** 9 **RENEWABLE ENERGY PROGRAM**

10 **SEC. 201. LICENSE FOR THE OPERATION OF RENEWABLE** 11 **ENERGY FACILITIES IN WATERS UNDER THE** 12 **JURISDICTION OF THE UNITED STATES SEA-** 13 **WARD OF THE COASTAL ZONE.**

14 The Coastal Zone Management Act of 1972 (16
 15 U.S.C. 1451 et seq.) is amended by adding at the end
 16 the following new section—

17 **“SEC. 314. RENEWABLE ENERGY FACILITIES.**

18 “(a) LICENSE REQUIREMENT.—No person may con-
 19 struct or operate a renewable energy facility in waters
 20 under the jurisdiction of the United States seaward of the
 21 coastal zone except in accordance with a license issued
 22 pursuant to this section.

23 “(b) LETTER OF INTENT, PUBLIC NOTICE AND RE-
 24 QUEST FOR PROPOSALS.—

1 “(1) Any person who seeks to apply for a li-
2 cense under this section shall notify the Secretary in
3 writing of their intent to apply for a license under
4 this section. A letter of intent shall include, at a
5 minimum, a description of the proposed renewable
6 energy facility, the specific location where the appli-
7 cant proposes to construct the facility, the proposed
8 timeframe for construction and operation of the fa-
9 cility and the names of the applicant, owners and
10 operators of the proposed facility.

11 “(2) Within 30 days of receipt of a letter of in-
12 tent, the Secretary shall publish in the Federal Reg-
13 ister notice containing the requirements for a license
14 application in the area identified in the notice issued
15 under paragraph (2), and a request for proposals
16 from all persons who seek a license to construct and
17 operate a renewable energy facility in the same loca-
18 tion. The Secretary shall determine the time within
19 which proposals must be submitted, but shall not set
20 the submission date less than 60 days from the date
21 notice is published in the Federal Register.

22 “(c) PUBLIC INTEREST EVALUATION.—In evaluating
23 applications received under this section, the Secretary
24 shall consider the amount of energy the proposed project
25 will produce, the economic impact to the region where the

1 facility will be located, the environmental impacts of the
2 proposed facility, the displacement of competing uses of
3 the proposed site and other relevant factors to determine
4 which proposed project best serves the public interest.

5 “(d) LICENSE ISSUANCE PREREQUISITES.—The Sec-
6 retary may only issue a license under this section after
7 the Secretary determines that—

8 “(1) based on recommendations from the Sec-
9 retary of Defense, the facility will be consistent with
10 national security needs;

11 “(2) based on recommendations from the Corps
12 of Engineers and the Coast Guard, the facility will
13 not create an obstruction to navigation;

14 “(3) the application is consistent with the ap-
15 proved management programs of affected states;

16 “(4) construction or operation of the facility
17 will not unduly restrict access to commercial and
18 recreational fishing areas, including shellfish beds,
19 and recreational boating areas;

20 “(5) the facility will not adversely affect marine
21 mammals, threatened or endangered species, migra-
22 tory birds, or designated critical habitat;

23 “(6) construction or operation of the facility
24 will not adversely affect aesthetic, cultural, or histor-

1 ical resources recognized or protected under Federal
2 law or the laws of the affected coastal States;

3 “(7) after consultation with the Secretary of
4 Transportation, that the renewable energy facility
5 does not pose a threat to aviation safety;

6 “(8) as a result of the Environmental Impact
7 Statement, the facility can be constructed or oper-
8 ated in a manner that minimizes any adverse impact
9 on the marine environment, including the seabed
10 and any other natural resources;

11 “(9) after consultation with the Secretary of
12 Energy, that the electricity that will be produced by
13 the facility is needed;

14 “(10) the location of the facility is not within
15 the boundaries of a National Marine Sanctuary or
16 Marine Protected Area;

17 “(11) the applicant will pay the fees required in
18 the application; and

19 “(12) the application was determined by the
20 Secretary under subsection (c) to best serve the pub-
21 lic interest.

22 “(e) LICENSE TERMS AND CONDITIONS.—

23 “(1) In issuing a license for the construction
24 and operation of a renewable energy facility the Sec-
25 retary shall prescribe the conditions necessary to

1 carry out the provisions of this Act and any other
2 law, and such license shall only be issued if the ap-
3 plicant agrees to comply with the conditions the Sec-
4 retary may prescribe in accordance with the provi-
5 sions of this Act.

6 “(2) No license issued under this section may
7 be sold, transferred, or materially changed in any
8 other manner without the prior written approval of
9 the Secretary. The Secretary shall ensure that any
10 such sale, transfer or change is consistent with the
11 management plans of affected coastal States before
12 issuing an approval.

13 “(3) The Secretary shall establish such bonding
14 requirements or other assurances as may be nec-
15 essary to assure that, upon revocation, termination,
16 relinquishment, abandonment, transfer, sale, or sur-
17 render of the license, the licensee will dispose of or
18 remove all components of the renewable energy facil-
19 ity as directed by the Secretary. The Secretary may
20 waive the disposal or removal requirements for any
21 submerged component of the renewable energy facil-
22 ity on or below the seabed if he finds that such re-
23 moval is not otherwise necessary and that such com-
24 ponent does not constitute a threat to the environ-

1 ment, or impede navigation, fishing, or use of the
2 seabed.

3 “(f) HEARING AND PUBLIC COMMENT.—The Sec-
4 retary may issue a license under this section only after
5 public notice and opportunity for comment, and after con-
6 ducting during the comment period at least one public
7 hearing in the coastal area affected by the facility for
8 which a license is proposed to be issued.

9 “(g) FEES AND ROYALTIES.—The Secretary shall re-
10 quire the payment of an application fee when a completed
11 license application is accepted in an amount sufficient to
12 cover the administrative expenses of processing the appli-
13 cation. The Secretary shall also, after notice and public
14 comment, establish an annual royalty fee to be paid by
15 the holder of a license issued pursuant to this section dur-
16 ing any year in which electricity is produced under such
17 license. To the extent practicable, the Secretary shall set
18 the royalty fee to recoup the market value of the site for
19 use as a renewable energy facility, taking into account the
20 size of the facility, any impacts on the marine environment
21 and other natural resources, the amount of electricity pro-
22 duced, the value of the site to competing uses, whether
23 or not the renewable energy facility is located in a priority
24 area and any other relevant factors; provided, however,
25 that the Secretary may set a royalty fee at less than mar-

1 ket value if he determines that it is necessary and appro-
2 priate to encourage (a) small-scale developers; (b) reduced
3 environmental impacts, or (c) the siting of renewable en-
4 ergy facilities in designated priority areas. Royalty fees
5 and impact fees assessed under subsection (b) shall be de-
6 posited in the Coastal Zone Management Fund established
7 under section 309.

8 “(h) NO RIGHT OR TITLE.—No provision of this Act
9 or any other law shall be construed to limit the authority
10 of the Secretary to terminate or limit, without compensa-
11 tion to the holder, any license issued pursuant to this sec-
12 tion if the Secretary determines that such termination or
13 limitation is necessary to further the purposes of this Act
14 or to implement or enforce this Act or any other law.”.

15 **SEC. 202. PRIORITY SITE IDENTIFICATION AND EVALUA-**
16 **TION.**

17 (a) PRIORITY SITE IDENTIFICATION AND EVALUA-
18 TION.—To accelerate the sensible development of renew-
19 able energy facilities in the marine environment, the Sec-
20 retary shall immediately begin to identify, list, and evalu-
21 ate those locations within the marine waters under the ju-
22 risdiction of the United States seaward of the coastal zone
23 that have the greatest potential, consistent with this Act
24 and section 309(a)(8) of the Coastal Zone Management
25 Act of 1972, as added by section 101 of this Act, for pro-

1 ducing energy from renewable energy facilities. In identi-
2 fying and listing these priority areas the Secretary shall
3 consult with the Secretary of Energy, the Coast Guard,
4 the Administrator of the Environmental Protection Agen-
5 cy, affected coastal states and other public and private in-
6 stitutions and companies with relevant expertise. In evalu-
7 ating potential sites to be listed, the Secretary shall, to
8 the maximum extent possible, consult with the Office of
9 Energy Efficiency and Renewable Energy and the Na-
10 tional Renewable Energy Laboratory of the Department
11 of Energy.

12 (b) PREFERENCE FOR PRIORITY SITES.—The Sec-
13 retary may not approve an application filed under section
14 314 of the Coastal Zone Management Act of 1972, as
15 added by section 201 of this Act, that proposes to con-
16 struct and operate a renewable energy facility outside the
17 boundaries of a site identified under subsection (a) unless
18 the Secretary determines, in writing, that the location of
19 the proposed facility otherwise satisfies the criteria used
20 in designating priority sites under section 202(a) of this
21 Act.

22 **SEC. 203. REGULATIONS AND OTHER LAWS.**

23 (a) REGULATIONS.—The Secretary shall promulgate
24 such regulations as are necessary to carry out the pur-

1 poses and objectives of this Act within 12 months after
2 the date of enactment of this Act.

3 (b) SAVINGS CLAUSE.—Nothing in this Act shall be
4 construed to displace, supercede, limit, or modify the juris-
5 diction, responsibility, or authority of any Federal or State
6 agency under any other Federal law.

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